Supreme Court, U.S.
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No. 96-477

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

JOHN P. FARQUHAR, et al.,
Petitioners,

vs.

CITY OF MANHATTAN BEACH, et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA SUPREME COURT

JOINT BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. When a state supreme court examines its own contract and property law to interpret a 19th century deed between its citizens for property within its borders, is any federal question presented for this Court to review?

2. When a Petitioner charges that a state supreme court has abused its own processes in order to avoid enforcing an asserted federal constitutional right, must the Petitioner demonstrate that it has raised and argued a federal constitutional issue? Does the fact that not one of the briefs filed by the Petitioner — including the Petition for Rehearing below — or the opinions rendered by the state courts raises any federal issues or even cites a provision of the United States Constitution belie this regrettable charge?

PARTIES TO THE PROCEEDING

Respondents are the City of Manhattan Beach, a municipal corporation, and Atchison, Topeka and Santa Fe Railway Company.

RULE 29.1 STATEMENT

1. The City of Manhattan Beach has no parent or subsidiary companies.

2. Santa Fe Parent Companies and Nonwholly Owned Subsidiaries:

Burlington Northern Santa Fe Corporation,
Burlington Northern, Inc.,
Santa Fe Pacific Corporation
Almeda Belt Line
The Belt Railway Company of Chicago
Central California Traction Company
Houston Belt & Terminal Railway
Kansas City Terminal Railway Company
The Oakland Terminal Railway
St. Joseph Terminal Railway Company
Sunset Railway Company
Texas City Terminal Railway Company
TTX Company
The Wichita Union Terminal Railway Company

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JOINT BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ABSENCE OF JURISDICTION

This is a pure state law title and contract interpretation case. It always has been. It involves the 1888 deed to a railroad right-of-way. All of the state court litigation was focussed on the state law issues of:

- What interest was transferred by that deed?
- To whom was it transferred?
- Who owned the land in 1986?
- Who owns it now?

The Petitioners (Claimants) urged that they were the true successors in interest to the owners of the land that underlay some Santa Fe Railway tracks. Their claim was that, under California law, the 1888 deed transferred only an easement, leaving fee title in their predecessors. The Respondents (the City and the Railroad or Santa Fe) countered that, under California law, the quitclaim deed transferred fee title to the Railroad's predecessor so that when Santa Fe sold the property to the City in 1986, that sale properly vested fee title in the City.

The California Supreme Court held that the language of the deed was ambiguous, but that application of familiar and well-settled state rules of contract interpretation and examination of extrinsic evidence showed that fee title rather than an easement was transferred to the Railroad's predecessor in 1888. All as a matter of California law. All without any party raising any issues of federal law. All without any party even citing any provision of the United States Constitution.

The Just Compensation Clause, which the Claimants cite as their jurisdictional entre, played absolutely no part in this case other than to provide a potential remedy at the pleading stage in the event the Claimants were able to prove that they owned the railroad strip. The essential question, however, of ownership of the property was solely one of state law. That is the only issue that each of the courts below considered. The mere existence of a federal right to just compensation — *if* ownership is proven — does not create a substantial federal question or confer upon this Court jurisdiction over the state law title issues.

It would thus appear that this Court has no jurisdiction to review these state court determinations of state law issues (*e.g.*, *Henry v. Mississippi*, 379 U.S. 443, 446

[1965]), and the Petition concedes as much (Pet., p. 12). The matter should end there.

CONSTITUTIONAL PROVISIONS WERE NEITHER RAISED, BRIEFED, NOR DISCUSSED BY THE CALIFORNIA COURTS OR PETITIONERS

The Petitioners' quotation of the Fifth and Fourteenth Amendments (Pet., p. 3) marks the first mention of those provisions in the appellate briefing of this case. Attached as Appendices 1-5 are the tables of authorities from the briefs filed by the Petitioners in the California Court of Appeal and the California Supreme Court — *including the Petition for Rehearing in the California Supreme Court* (App. 5), where one could have expected the supposed issue of evasion of the Fifth and Fourteenth Amendments to have been raised if the Petitioners were serious about it. Instead, the Petitioners' arguments at all stages have been targeted wholly on state law contract and deed interpretation issues.[1]

Neither the California Superior Court, nor the California Court of Appeal, nor the California Supreme Court made any reference to the United States Constitution or any question of federal law. (Pet., Appendices A, C, E.) As the Superior Court and Court of Appeal ruled in favor of the Petitioners, one presumes the Petitioners are not charging those courts with using state law to evade federal constitutional issues. The California Supreme

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[1] The one decision of this Court ever referred to by the Petitioners (*East Alabama R. Co. v. Doe*, 114 U.S. 340 [1885]) was a decision dealing with the meaning of the term "right-of-way" under Alabama property law and had nothing to do with any federal constitutional issues.

Court — which necessarily has plenary power to determine the content and application of California law — viewed the case in the same light as the courts below it: as a pure matter of California contract and property law.

STATEMENT OF THE CASE

The facts of this case are amply set forth in the decision of the California Supreme Court attached as Appendix A to the Petition. There is thus no need to burden this Court with another exhaustive examination of events that transpired more than a century ago in a far corner of the nation. It suffices to note that the California Supreme Court applied settled local precepts of contract, property, and conveyancing law to those facts and determined that Santa Fe acquired fee title to the land beneath its tracks in 1888 and transferred it to the City 98 years later to create a linear park and jogging trail through the center of town. The Claimants dissatisfaction with that result cannot make a federal case out of it.

REASONS FOR DENIAL OF THE PETITION

There are good reasons why this Court abjures cases based on state law. One of them is jurisdictional: this Court does not sit as a court of error to review state court decisions of state law. A related reason is that such cases tend to be mired in the legal and factual details of the locality. This case is a paradigm.

It was treated throughout all the proceedings below — in all courts and in all contexts — as a matter of the application of state contract and property law to a deed executed in 1888.

This is not a case in which the state court held that there was no property interest under state law that could qualify for protection under the Fifth and Fourteenth Amendments, although state courts possess the power to do so (*e.g., Fox River Paper Co. v. Railroad Commn.*, 274 U.S. 651, 657 [1927]).[2] All the California Supreme Court did was to determine who owned a recognized property interest — as a matter of California contract and conveyancing law. That is California's business. With respect, it is not the sort of thing with which this Court needs, or ought, to concern itself, or for which this Court's jurisdiction was created.

ABSTRACT LEGAL PROPOSITIONS DON'T DECIDE CASES

The Petition is based on a series of abstract legal propositions about the jurisdiction of this Court to determine whether a state court has made it appear that a case was decided on state grounds merely as a subterfuge to avoid having to deal with a federal issue and to prevent this Court from reaching it. There's nothing wrong with the propositions. They simply have no application here.

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[2] Thus, the Petitioners' discussion of the concept that "this Court has jurisdiction to revisit a state court decision that an asserted property right never came into existence . . ." (Pet., p. 13) is several leagues wide of the mark. Those cases deal with whether certain types of interest qualify as "property," not whether, as here, the plaintiff or defendant owns the property.

A

The Decision is Wholly Consistent With Prior California Law

The Claimants recognize that the existence of an adequate and independent state ground for the decision deprives this Court of jurisdiction to review the judgment. (Pet., p. 12.) They have thus sought to convince this Court that the decision below is not so based. To that end, they repeatedly take the California Supreme Court to task for supposedly reaching a decision "contrary" to its own earlier decisions (Pet., pp. 2, 13, 14), going so far as to assert that the court "jettisoned its own settled rules of construction . . . ." (Pet., p. 19.)

Not so.

First, the form of the deed. One of the keys to the decision below was that the parties used a quitclaim deed to transfer the property. Quitclaim deeds have been in active use in California since the State's founding. Indeed, in one of its earliest decisions, the California Supreme Court recognized that a quitclaim deed transferred "all the right and title of the grantor." (*Sullivan v. Davis*, 4 Cal. 291, 292 [1854].) And in the decade before the Redondo Land Company signed the deed at issue here, the California Supreme Court noted that quitclaim deeds "have been in every-day use for the purpose of transferring title to land . . . ." (*Graff v. Middleton*, 43 Cal. 341, 344 [1872].)

That law has remained constant through the present, and has always been understood to mean that the quitclaim form transferred whatever interest in the property the grantor owned. This is hornbook law:

> "A quitclaim deed transfers to the grantee *all of the right, title, and interest* which the grantor had at the time he executed and delivered the deed and which is capable of being conveyed by a deed. . . . Its sole function is merely to transfer *whatever interest* the grantor had in the described property at the time the conveyance was made. . . . The quitclaim deed transfers *whatever interest* the grantor may have in the property, whether legal or equitable." (2 Miller & Starr, *California Real Estate 2d*, Deeds § 6:12 at 504-505 [2d ed. 1989]; emphasis added.)

Second, the rules of interpretation. California deeds are interpreted like other California contracts. (Cal. Civ. Code § 1066.) The goal of contract interpretation is to determine and enforce the intent of the parties. (*Pacific Gas & Elec. Co. v. G.W. Thomas Drayage & Rigging Co., Inc.*, 69 Cal.2d 33, 38 [1968].) Because the intent of the contracting parties is the key (Cal. Civ. Code § 1636), the surrounding circumstances are often critical to understanding. (Cal. Civ. Code § 1647.)

Where the contract is a deed transferring interests in real property, there is an overriding consideration which controls the more general rules of California contract interpretation:

> "A fee simple title is presumed to be intended to pass by a grant of real property, unless it appears from the grant that a lesser estate was intended." (Cal. Civ. Code § 1105; *see*

Basin Oil Co. v. City of Inglewood, 125 Cal.App.2d 661, 664 [1954].)

Here, the California Supreme Court hewed to those standards, giving its full attention to determining the intent of the Redondo Land Company in 1888. When the words of the deed failed to provide clarity, extrinsic evidence was consulted:

> "Having canvassed the four corners of the deed, we end our search frustratingly little more informed of the parties' intention than we began. Judging by the terms 'remise, release and quit-claim' and 'right of way,' the grantor appears to have intended at one and the same time to convey to the railway the entire fee estate and a limited interest confined to an easement for railroad purposes. The remainder of the language is equally ambiguous, both supporting and contradicting one or the other conclusion. We thus turn to extrinsic evidence in the hope of enlightenment." (Pet., Appendix A, p. A 20.)

That approach is wholly in line with established California practice.

Third, right-of-way deeds. Although the Claimants cleave to their theory that earlier California cases held that rights-of-way are usually easements, and that the case law from virtually all other jurisdictions holds the same (Pet., pp. 16-17), the California Supreme Court's extensive analysis of the issue justified the conclusion it borrowed from the Washington Supreme Court:

> "The authorities are in hopeless conflict. They cannot be reconciled .... About the only common ground that can be found [in the right-of-way decisions from around the country] is that the intention of the parties to the conveyance is of paramount importance and must ultimately prevail in a given case." (Pet., Appendix A, p. A 13, fn. 8; quoting with approval from *Swan v. O'Leary*, 225 P.2d 199, 200 [Wn. 1950].)[3]

California right-of-way decisions have historically sought to determine the intent of the parties. As one of them put it, "we cannot overlook the fact that if the grantors really intended to convey only an easement, they could have easily so expressed that purpose." (*Basin Oil Co. v. City of Inglewood*, 125 Cal.App.2d 661, 666 [1954].)

The decision below is in harmony with the general, historical approach.

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[3] In their criticism of the California Supreme Court's conclusion that the authorities are in "hopeless conflict," it is noteworthy that the Claimants omit the fact that the court was quoting the conclusion of the Supreme Court of another state that had reached that conclusion several decades earlier, and they also omit the reasons why both the California and Washington Supreme Courts reached that conclusion: it's the facts. Each case turns on its own. There simply are no generic rules for right-of-way deeds. The Claimants may believe that to be unwise, but it's not unconstitutional. (Compare *Broad R.P. Co. v. South Carolina ex rel. Daniel*, 281 U.S. 537, 541 [1930] ["this court will not inquire whether the rule applied by the state court is right or wrong, or substitute its own view of what should be deemed the better rule for that of the state court."])

B

Bashing Respected Retired Jurists is Improper

In what can only be described as a virtual tantrum, the Claimants urge that the author of the opinion below had it in for them for some reason and twisted the law (with the complicity of three of his colleagues) to eviscerate their federal rights (without ever mentioning them). (Pet., pp. 11, 19, 23, 25-27.)

But if Justice Arabian expressed concern at oral argument about people who foment litigation and convince those who would otherwise not have been in court to file lawsuits, he was doing no more than following the advice of Abraham Lincoln who admonished:

> "Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauled the register of deeds in search of defects in titles, whereon to stir up strife, and put money in his pocket?" (Lincoln, *Notes For A Law Lecture*, 2 The Collected Works of Abraham Lincoln 81 [Rutgers 1953].)

The Claimants' effort to cast aspersions on the subjective motivation of the majority of the court below based on a few questions by one of its members is beyond the pale. This Court — perhaps more than any other — is familiar with the intensity of questioning that can occur at oral argument. There is no excuse for the Claimants' charge. It would have better been left on the cutting room floor. Were this Court to entertain such

challenges, one quails at the thought of the impact on the incoming load of Petitions for Writ of Certiorari.

First. There is nothing in the record of this case to give rise to any due process concerns or issues of evasion of constitutional rights. This case was tried, decided, and appealed on the basis of California contract and property law. That's where everyone's focus was. That the decision went against the Claimants is no excuse for their charges of judicial misconduct.

Second. The Claimants sought a rehearing below and took advantage of the fortuitous retirement of the author of the opinion in this case and the former Chief Justice (also a member of the majority below) to openly plead with their replacements for either of them to join with the dissenters and decide the case in their favor. Neither of the new Justices would do so. Rehearing was denied.

Third, and most importantly. In their Petition for Rehearing, the Claimants did not voice any concern that their federal constitutional rights had been surreptitiously violated through the pretext of deciding a question of state law. In fact, as Appendix 5 shows, the Claimants failed so much as to cite any provision of the U.S. (or even California) Constitution. Plainly, the argument is a make-weight concocted belatedly to give some color to this petition which simply presents no federal issues.

THIS COURT'S JURISDICTION IS PROPERLY RESERVED FOR CASES RAISING SIGNIFICANT FEDERAL QUESTIONS

The party seeking certiorari has the burden to demonstrate this Court's jurisdiction. (*Memphis Natural Gas Co. v. Beeler*, 315 U.S. 649, 651 [1942].) The Claimants have not done that.

First, no constitutional issue raised or decided below. The opinions below fail even to mention the constitution. The decisions deal with state law — of contract and property conveyancing. (Pet., App., A, C.) Where no constitutional issues are decided by the state court, the petitioner must demonstrate that a federal constitutional question was properly raised. (*Street v. New York*, 394 U.S. 576, 582 [1969].)

Lacking any constitutional decision below, one is left to determine whether a federal issue was raised. There is no showing that one was raised, and the briefs filed below belie it. Attached to this brief as Appendices 1-5 are the tables of authorities filed by the Claimants below. In none is there even a citation to the U.S. Constitution. Even in the Petition for Rehearing in the California Supreme Court, the Claimants failed to mention the constitution. They merely rehashed their rejected arguments about state contract and property law and unblushingly asked the two newest Associate Justices to vote contrary to the way that Associate Justice Arabian and Chief Justice Lucas had voted on this case before their retirement. If a constitutional issue was created by the California Supreme Court's decision, *that* was surely the time to raise it.

Second, adequate nonfederal grounds. When a state court decides a case on either a sole issue of state law or an alternative issue of state law, this Court has no

jurisdiction to review that decision as long as the state law determination is adequate and independent of the federal issue. (*Broad R. P. Co. v. South Carolina ex rel. Daniel*, 281 U.S. 537, 540-541 [1930]; *Michigan v. Long*, 463 U.S. 1032, 1037 [1983].) When the state court decides the case on substantive, rather than procedural, grounds, this Court's lack of jurisdiction is even more plain. (*Henry v. Mississippi*, 379 U.S. 443, 446 [1965].)

Here, the nonfederal grounds are not merely the dominant thing, they are the only thing. The state courts decided what sort of property interest was transferred by a deed executed and performed in California, and they interpreted an unclear deed in light of actions done in California contemporaneously with the deed — actions that included two turn-of-the-century proceedings in the California Superior Court. Based on that, the court decided who owned the property. How to interpret an unclear deed is a classic state law issue.

Third, no subterfuge to evade the U.S. Constitution. Although lacking any evidence in this case to support the plea, the Claimants have discovered a series of cases in which this Court has exercised jurisdiction to determine whether an ostensible state law ground of decision was merely a smokescreen for evading the protection of a federal constitutional right. (*E.g.*, *Michigan v. Long*, 463 U.S. 1032, 1037 [1983].)[4]

But the kinds of cases in which this Court examines state law decisions have historically fallen into recognizable categories: (1) cases in which the state court clearly relied on the federal ground even though it could

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[4] Even when engaging in such an examination, this Court generally defers to state court interpretations of state law. (*E.g.*, *Memphis Natural Gas Co. v. Beeler*, 315 U.S. 649, 654-655 [1942].)

have relied on the state ground (*Beecher v. Alabama*, 389 U.S. 35 [1967]); (2) cases in which the state court interpreted state law in light of what it believed to be a controlling precept of federal law (*Delaware v. Prouse*, 440 U.S. 648 [1979]); (3) cases in which the federal ground and the nonfederal ground are so interwoven that the state law issue is not independent (*Enterprise Irr. Dist. v. Farmers Mut. Canal Co.*, 243 U.S. 157 [1917]); and (4) cases in which state procedures have prevented the raising of a federal issue and the state procedures fail to serve a legitimate state interest (*Henry v. Mississippi*, 379 U.S. 443 [1965]).

This case is none of the above. It deals with state law of conveyancing. Here, the state courts decided who transferred what property interest as a matter of state law.

The contrast, for example, with *Michigan v. Long*, 463 U.S. 1032, 1037 (1983) is stark. There, this Court noted that "[t]he court below referred twice to the State Constitution in its opinion, but otherwise relied exclusively on federal law." In that context, this Court could conclude that the state ground was plainly not "adequate and independent" enough to sustain the judgment. (463 U.S. at 1043-1044.) Here, however, none of the courts below even mentioned any federal law (Pet., Appendices A, C, E), nor did any of the Claimants' own briefs (Appendices 1-5 hereto). Plainly, this is not a case in which state law was some sort of smokescreen to avoid dealing with properly raised federal issues.

Even if the Claimants were correct (which they are not) that the California Supreme Court changed the law in this case, that would not present a federal constitutional issue. This Court has repeatedly so held: *Brinkerhoff-Faris Trust & Sav. Co. v. Hill*, 281 U.S. 673, 681, fn. 8 (1930) ["State courts, like this court, may

ordinarily overrule their own decisions without offending constitutional guaranties, even though parties may have acted to their prejudice on the faith of the earlier decisions."]; *Fox River Paper Co. v. Railroad Commn.*, 274 U.S. 651, 657 (1927) ["We are not concerned with the correctness of the rule adopted by the state court, its conformity to authority, or its consistency with related legal doctrine."]; *Demorest v. City Bank Farmers T. Co.*, 321 U.S. 36, 49 (1944) (Douglas, J., concurring) ["That is a question of New York law on which the New York court has the final say. It is none of our business — whether we deem that interpretation to be reasonable or unreasonable, sound or erroneous."]; *Tidal Oil Co. v. Flanagan*, 263 U.S. 444, 450 (1924) [". . . the mere fact that the state court reversed a former decision, to the prejudice of one party, does not take away his property without due process of law."]; *Patterson v. Colorado ex rel. Atty. Gen.*, 205 U.S. 454, 461 (1907) ["There is no constitutional right to have all general propositions of law once adopted remain unchanged. Even if it be true . . . that the supreme court of Colorado departed from earlier and well-established precedents to meet the exigencies of this case, whatever might be thought of the justice or wisdom of such a step, the Constitution of the United States is not infringed."].

In short, this Court is not a court of error. The Claimants have done no more than reargue their state law submission along with a plea that this Court reach a different decision on no better a basis than their partisan, subjective surmise as to the motivation of the author of the opinion below.

CONCLUSION

For all the fervor displayed in the Petition for Writ of Certiorari, the issues in this case do not even begin to give rise to a federal, much less a constitutional, question. The Petition presents only a state law issue, and in the end quarrels with the California Supreme Court's exercise of its prerogative in construing state conveyancing law.

Respondents pray that the Petition be denied.

DATED: October 25, 1996.

Respectfully submitted,

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APPENDIX 1

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